

**DEPARTMENT OF FINANCE**  
**INITIAL STATEMENT OF REASONS**  
**(Draft 3/20/2013)**

Subject Matter of Proposed Regulations: Standardized Regulatory Impact Assessment for Major Regulations

**(1) Section Affected: 2000—Definitions.**

Specific Purpose of each adoption, amendment, or repeal:

1. Problem being addressed:

The regulations contain terms that may not be known to all who would be affected by the regulations.

Certain terms need to be defined so as to make the regulations easier to read and understand (e.g. agency, notice of proposed changes, Government Code, Department of Finance, Office of Administrative Law, and the acronym for the standardized regulatory impact assessment).

Government Code Section 11342.548 does not specify the period of time over which the economic impact of a major regulation is to be measured nor whether the economic impact is computed on a “net” basis after subtracting any benefits or savings that might result.

2. Anticipated benefits from this regulatory action:

Specificity about the \$50 million threshold and how to measure the economic impact of proposed major regulations ensures that agencies will be computing the threshold value in a consistent manner.

Factual Basis/Rationale

Factual basis for determination that each proposed change is reasonably necessary to address the problem for which it is proposed:

Without a time specification, it would be difficult to ascertain whether a proposed regulation met the threshold value for a major regulation and agencies would not

measure the impact consistently. The definition of a “major regulation” will ensure that all agencies are consistent in their approach to measuring the economic impact of a proposed regulation. In business and economics, one year is a standard time unit for measuring budget year, fiscal year or calendar year. This proposal is based on that common standard of one year.

Moreover, given variations in regulatory timeframes (e.g., regulations may exist or be effective for a prescribed period of time), this regulation will provide clarity to the public on the scope of a regulation’s impact and provide certainty for state agencies as to the baseline upon which rules are to be evaluated for meeting the threshold for major regulations.

### Underlying Data

Technical, theoretical or empirical studies, reports, or documents relied upon (if any):

See, for example, California Constitution Article 13B, Sections 2, 5, 6, and 8 and Government Code Sections 13290-13291 showing use of one year as a standard time unit for measuring government fiscal functions such as budget.

### Business Impact

This regulation will not have a significant adverse economic impact on businesses. This initial determination is based on the following facts or evidence/documents/testimony: This regulation does not impact businesses. It applies by statute only to the processes used by state agencies that are proposing major regulations.

### Economic Impact Assessment

This regulatory proposal will have the following effects:

- It will not create or eliminate jobs within the State of California because it does not impact jobs within the state. It applies by statute only to the processes used by state agencies that are proposing major regulations.
- It will not create new business or eliminate existing businesses within the State of California because it does not impact businesses within the state. It applies by statute only to the processes used by state agencies that are proposing major regulations.
- It will not affect the expansion of businesses currently doing business within the State of California because it does not impact businesses within the state. It

applies by statute only to the processes used by state agencies that are proposing major regulations.

- This regulatory proposal benefits the health and welfare of California residents to the extent that it results in better, more cost-effective regulations.
- This regulatory proposal does not affect worker safety because it does not impact workers. It applies by statute only to the processes used by state agencies that are proposing major regulations. However, this regulatory proposal benefits the worker safety of California residents to the extent that it results in better, more cost-effective regulations.
- This regulatory proposal does not affect the state's environment because it does not impact the environment. It applies by statute only to the processes used by state agencies that are proposing major regulations. However, this regulatory proposal benefits California's environment to the extent that it results in better, more cost-effective regulations.

#### Specific Technologies or Equipment

This regulation does not mandate the use of specific technologies or equipment.

#### Consideration of Alternatives

No reasonable alternative to the regulatory proposal would be either more effective in carrying out the purpose for which the action is proposed or would be as effective or less burdensome to affected private persons and equally effective in achieving the purposes of the regulation in a manner that ensures full compliance with the law being implemented or made specific.

Set forth below are the alternatives which were considered and the reasons each alternative was rejected:

1. Defining the method used to determine whether a proposed regulation meets the threshold for a major regulation as the life time of the regulation. This alternative was rejected because in many situations it is almost impossible to determine the lifetime of a regulation. The economic assessment becomes more speculative the farther in the future it is projected. This alternative would result in inconsistency in that agencies could use differing criteria for determining the life span of a regulation.

2. Not clarifying how to determine whether a proposed regulation meets the threshold for a major regulation. This alternative was rejected because it provides no guidance, does not resolve the ambiguity in the statute, and would result in inconsistent

methods of calculating the \$50 million threshold.

3. Select some other specific length of time to be used in determining whether a regulation meets the threshold for a major regulation. This alternative was rejected because it was arbitrary and because the usual standard with respect to fiscal matters is one year.

4. Assessing whether a proposal meets the \$50 million threshold for a major regulation by using the net economic impact, after offsetting benefits of the proposed regulation. This alternative was rejected because it is inconsistent with the statutory intent of SB 617.

## **(2) Section Affected: 2001—Notification and Consultation**

### Specific Purpose of each adoption, amendment, or repeal:

#### 1. Problem being addressed:

(a) The Department of Finance (“Department”) must have sufficient advance notice of proposed major regulations to permit it to adequately plan for workload needs.

(b) There is currently no mechanism by which the Department can evaluate an agency’s compliance with SB 617.

(c) Government Code Section 11346.36(f) does not specify when an agency must submit its Standardized Regulatory Impact Assessment (“SRIA”) to the Department.

(d) The Legislature had concluded that agencies were not adequately considering all possible reasonable alternatives before proposing major regulations, particularly those regulations that would negatively affect businesses and job growth in California, and were not inviting possible alternatives from those who would be affected by the major regulations.

#### 2. Anticipated benefits from this regulatory action:

Advance notice of potential major regulations permits the Department to engage in adequate planning and preparation so that it can ensure its early involvement in major regulations and a more efficient review of those regulations.

Involving the Department and affected parties could result in the discovery of additional and perhaps more cost-effective alternatives to the proposed major regulations that are consistent with the enabling law and also those alternatives that might require legislative changes.

### Factual Basis/Rationale

Factual basis for determination that each proposed change is reasonably necessary to address the problem for which it is proposed:

Advance notice of potential major regulations is necessary for the Department to engage in adequate planning and preparation so that it can ensure both early involvement in and a more efficient and timely review of major regulations. November was selected as the most appropriate date for the required notification. New laws have already been signed and agencies should know by that time whether regulations will be needed to implement, interpret or make specific a statute. Key budget deadlines occur in January. Therefore, the Department must know well in advance of the January budget deadlines approximately how many major regulations will be sought in the upcoming year so that it can complete its planning process. The information required in the notification to the Department is the bare minimum necessary to allow the Department to complete the planning process.

The requirement that an agency submit to the Department the data and calculations it used in determining whether a proposed adoption, amendment or repeal qualified as a major regulation gives the Department a tool by which it can assess whether an agency is complying with SB 617.

For those notifications made after the November 1 date, the Department has determined, based on its expertise and recognizing that this review will be in addition to its current heavy workload, that 60 days notice provides sufficient time for it to participate in the economic assessment process.

For major regulations adopted via the emergency process, contemporaneous filing will not interfere with or slow down that emergency process and in the Department's opinion, will provide sufficient time for the Department to work with the agency with respect to the economic impact of the proposed major regulation.

Timely submission of the SRIA to the Department will help ensure that the agency is using an appropriate method to evaluate alternatives, consistent with the intent of SB 617. Further, the Department will be better able to provide assistance if it knows how an agency focused on a preferred alternative, the selection of which is a crucial and

difficult step in the economic impact assessment process. The 60 day submission time was selected because it is consistent with the time frames in subdivision (a)(2) and would provide sufficient time for the Department to review the SRIA before the agency files a notice of proposed changes with OAL.

Concerns have been expressed by the Legislature that agencies do not work with affected individuals, businesses or affected governmental agencies to develop cost-effective solutions to the problem being addressed. This regulation will directly address those concerns through the requirement for seeking public input from those who would be affected by the proposed major regulation. This proposal does not impose an additional outreach requirement on those agencies that currently solicit public input on alternatives prior to initiating the formal rulemaking process. Involving the Department and affected parties could result in the discovery of additional and perhaps more cost-effective alternatives to the proposed major regulations. A requirement for public input prior to the formal rulemaking process will ensure that discarded alternatives will be publicly reviewed and evaluated.

#### Underlying Data

Technical, theoretical or empirical studies, reports, or documents relied upon (if any):

October 1, 2012 letter from various legislators to Governor Brown

Little Hoover Commission Report entitled "Better Regulations: Improving California's Rulemaking Process (October 2011)

Analysis prepared for Senate Committee on Governmental Organization, hearing date: May 10, 2011

Analysis prepared for Assembly Committee on Accountability and Administrative Review, hearing date: September 7, 2011

Guidelines for Preparing Economic Analyses  
U.S. EPA  
EPA-240-R-00-003  
September 2000

#### Business Impact

This regulation will not have a significant adverse economic impact on businesses. This initial determination is based on the following facts or evidence/documents/testimony:

This regulation does not impact businesses. It applies only to the processes used by state agencies that are proposing major regulations.

### Economic Impact Assessment

This regulatory proposal will have the following effects:

- It will not create or eliminate jobs within the State of California because it does not impact jobs within the state. It applies by statute only to the processes used by state agencies that are proposing major regulations.
- It will not create new business or eliminate existing businesses within the State of California because it does not impact businesses within the state. It applies by statute only to the processes used by state agencies that are proposing major regulations.
- It will not affect the expansion of businesses currently doing business within the State of California because it does not impact businesses within the state. It applies by statute only to the processes used by state agencies that are proposing major regulations.
- This regulatory proposal benefits the health and welfare of California residents to the extent that it results in better, more cost-effective regulations since affected individuals, businesses and governmental agencies must be contacted and involved in the process.
- This regulatory proposal does not affect worker safety because it does not impact workers. It applies by statute only to the processes used by state agencies that are proposing major regulations. However, this regulatory proposal benefits the worker safety of California residents to the extent that it results in better, more cost-effective regulations since affected individuals, businesses and governmental agencies must be contacted and involved in the process.
- This regulatory proposal does not affect the state's environment because it does not impact the environment. It applies by statute only to the processes used by state agencies that are proposing major regulations. However, this regulatory proposal benefits California's environment to the extent that it results in better, more cost-effective regulations since affected individuals, businesses and governmental agencies must be contacted and involved in the process.

### Specific Technologies or Equipment

This regulation does not mandate the use of specific technologies or equipment.

### Consideration of Alternatives

No reasonable alternative to the regulatory proposal would be either more effective in carrying out the purpose for which the action is proposed or would be as effective or less burdensome to affected private persons and equally effective in achieving the purposes of the regulation in a manner that ensures full compliance with the law being implemented or made specific.

Set forth below are the alternatives which were considered and the reasons each alternative was rejected:

Not mandate timely submission of the SRIA to the Department or consultation with those affected by the proposed major regulation. This alternative was rejected because it is not consistent with the legislative intent that there be transparency in the adoption of proposed major regulations and because it would reduce the possibility of discovering cost-effective alternatives.

Not require consultation with the Department regarding the appropriate methodology for assessing nonmonetary benefits. This alternative was rejected because SB 617 requires the Department to provide guidance with respect to the appropriate methodology and consultation is a necessary element of that guidance.

### **(3) Section Affected: 2002 – Standardized Regulatory Impact Assessment**

#### Specific Purpose of each adoption, amendment, or repeal:

##### 1. Problem(s) being addressed:

The total state economic impact is not generally evaluated (as opposed to localized effects or immediate economic impact on directly affected entities).

There is currently no standardized approach to economic impact assessment, which leads to inconsistent or inadequate results.

Many departments lack the expertise and guidance to make the economic assessments required by law.

The Legislature has asked, via SB 617, for a more complete economic impact analysis and for a standardized approach to that analysis.

Regulations may adversely impact small businesses to a greater extent than large businesses since large businesses may be better able to absorb the cost of those regulations; however this distinction is not consistently addressed in economic assessments.

The extent to which costs can be passed on to others, including customers, employees, suppliers and owners, is an essential element of evaluating the true economic impact and is not currently required to be assessed.

Government Code Section 11346.36(b)(2) requires the department to assist agencies in determining the appropriate methodology for comparing alternatives with an established baseline and this proposal would provide that guidance.

Agencies are required by law to assess the monetary and nonmonetary benefits of proposed major regulations but currently have no guidance as to how to make such an assessment.

2. Anticipated benefits from this regulatory action:

- A more complete assessment of the economic impact of a proposed major regulation.
- Consistency in the type of economic impact analysis being conducted.
- Greater confidence in the results of that economic impact analysis.
- Ensures a more thorough assessment of alternatives to the solution set forth in the proposed major regulation.
- Consistency in determining the appropriate baseline for comparing proposed regulatory alternatives for a proposed major regulation.
- Agencies will receive the guidance necessary to assist them in better assessing the monetary as well as the nonmonetary benefits of proposed major regulations, as required by SB 617.

Factual Basis/Rationale

Factual basis for determination that each proposed change is reasonably necessary to address the problem for which it is proposed:

The Legislature identified a need to develop more complete economic impact assessments of proposed regulations, an assessment that should capture the true total state impact on businesses and individuals. The large (perhaps unlimited) number of

economic assessment approaches would result in inconsistent estimates of the true economic impact of the proposed major regulations, contrary to the intent expressed by the Legislature in SB 617. The proposed narrowing of permissible methodologies is necessary to ensure confidence and consistency in the results of the economic impact assessment. Further, this proposed regulation will result in more precise assessments and a clearer validated assessment of costs and benefits.

Certain economic models are professionally accepted by economists and others may appropriately be used only for limited purposes. The models used by agencies must provide a consistent method of measuring economic impact and must be able to provide results that can be validated. The proposed regulation has been designed so as to permit flexibility without sacrificing the level of confidence in the results of such assessments. As a result of its meetings with sixteen agencies, the Department has determined that agencies need to have flexibility in the type of economic assessment model they wish to utilize.

Some agencies (such as Fish and Wildlife) need to be able to use the same economic impact assessment model as that used by the federal government, which is one of the professionally accepted models. Other agencies may have developed their own model and should be able to use that model if it will provide results consistent with those provided by the professionally accepted models and if those results can be validated.

Without the information required in subdivision (b), the Department would be unable to verify the conclusions reached by the agency. It would be unable to assure that the methodology used was viable and that it had resulted in a reasonable economic assessment of the various alternatives.

Without the information required in subdivision (c), the Department would not be able to assess whether the economic assessment model being utilized is in fact equivalent to the type of model described in subdivision (a)(1). The data sources and equations utilized by the model could result in a different estimate, one that may not be as valid as the estimates that would result from a model of the type described in subdivision (a)(1).

With respect to subdivision (d), it is necessary to require the use of the Department's most current public state economic and demographic projections because those are the most widely accepted baseline California data on which to base an assessment of the economic impact of a proposed major regulation. However, the timing of those projections may create delays in an agency's rulemaking process if new projections are issued during the formal process. Therefore, deviations from this requirement should be permitted on a case-by-case basis.

The requirements contained in subdivision (e) will ensure that agencies will adequately evaluate whether a proposed major regulation will have a disproportionate adverse

economic impact on small businesses. An agency cannot identify and evaluate reasonable alternatives or fully understand the direct impact to affected persons if it has not separated out the impact on the various groups affected by the regulation. Based on its experience, the Department believes the costs described in subdivision (e) must be identified in order for an agency to be able to do a complete economic impact assessment. For example: in crafting regulations to improve landfill safety, small landfills found it much more difficult to comply with the improvement regulations than large landfills and were thus more likely to be supplanted by larger businesses as they could not continue operating due to the higher cost to them. This resulted in a potential elimination of businesses of a certain size.

Likewise, knowing who will bear the cost is necessary in order to have a complete analysis and understanding of the true cost of the proposed major regulation. Requiring an identification of costs to affected government agencies allows the Department to assess the impact of the proposed major regulations on the state budget.

Given the requirement of SB 617 that agencies consider the economic impact of proposed regulatory alternatives for a major regulation with a baseline, an agency needs to utilize a baseline for comparing alternatives that reflects whether and to what extent behaviors are anticipated to change even in the absence of the proposed major regulation. The requirement in subdivision (f) is necessary in order to accurately assess the economic impact resulting from the regulation itself rather than from other factors. An agency cannot identify and evaluate reasonable alternatives or fully understand the direct impact to affected persons if it has not separated out the impact of the proposed regulatory alternatives from the impact expected to be generated by anticipated changes in behavior that do not result from the regulation itself but rather from other factors.

The requirements of subdivision (g) are necessary to enable an agency to consider where the actual impacts of the regulation will be felt, particularly if the impacts are not completely borne by the regulated entity. This will allow a more complete assessment of the actual economic impact of the proposed major regulation and therefore permit better identification of more cost-effective alternatives.

The Legislature has determined in SB 617 that agencies must assess the monetary and nonmonetary benefits of a proposed major regulation. The economic impact of a proposed major regulation should carefully distinguish the costs to the regulated entity from the benefits to the state itself with respect to the policy objectives underlying the statute that is being implemented, interpreted, or made specific. Those policy objectives may result in both monetary and nonmonetary benefits and it is important that those benefits be identified. This information must be included in the SRIA in order for the Department and for affected persons to assess how the agency reached its determinations and valuations of nonmonetary benefits.

There are several widely used approaches to assessing the value of monetary and nonmonetary benefits, including revealed or stated preferences (direct and indirect) methods. These approaches have been included in this section to provide guidance to agencies that may be promulgating a major regulation. In addition, if none of the listed methods is applicable, the Department would then assist agencies in determining the most appropriate methodology for assessing the value of both monetary and nonmonetary benefits. Prescribing the approaches that an agency may use to assess the value of monetary and nonmonetary benefits will bring greater consistency to that assessment process.

Subdivision (i) requires that the information described in Government Code Section 11346.36(b)(5), which is an integral part of the required economic assessment, be included in the SRIA so that all economic impact information will be placed in one document, thus making those impacts more readily accessible to those affected by the proposed major regulation and also by the Department.

Subdivision (j) requires that the information described in Government Code Section 11346.3(e), which is an integral part of the required economic assessment, be included in the SRIA so that all economic impacts will be placed in one document, thus making those impacts more readily accessible to those affected by the proposed major regulation and by the Department.

To meet the clarity standard and avoid confusion and so that all requirements can be found in one place, the Department has included the listing from Government Code Sections 11346.3(c) and 11346.36(b) of the economic impact elements required to be assessed and included in the standardized regulatory impact analysis and also monetary benefits and the value of nonmonetary benefits. Inclusion of these two lists provides greater clarity to the regulation.

#### Underlying Data

Technical, theoretical or empirical studies, reports, or documents relied upon (if any):

September 2012 Survey of Selected State Agencies by Dept. of Finance

California Department of Finance Dynamic Review Analysis  
([http://www.dof.ca.gov/html/fs\\_data/dyna-rev/dynrev.htm](http://www.dof.ca.gov/html/fs_data/dyna-rev/dynrev.htm))

*Dynamic Revenue Analysis in California: An Overview* by P. Berck, E. Golan and B. Smith

Guidelines for Preparing Economic Analyses (EPA publication dated September 2000)

Regional Economic Models Inc. (<http://www.remi.com/products/pi>)

IMPLAN ([http://implan.com/V4/index.php?option=com\\_content&view=frontpage&Itemid=70](http://implan.com/V4/index.php?option=com_content&view=frontpage&Itemid=70))

### Business Impact

This regulation will not have a significant adverse economic impact on businesses. This initial determination is based on the following facts or evidence/documents/testimony:

### Economic Impact Assessment

This regulatory proposal will have the following effects:

- It will not create or eliminate jobs within the State of California because it does not impact jobs within the state. It applies by statute only to the processes used by state agencies that are proposing major regulations.
- It will not create new business or eliminate existing businesses within the State of California because it does not impact businesses within the state. It applies by statute only to the processes used by state agencies that are proposing major regulations.
- It will not affect the expansion of businesses currently doing business within the State of California because it does not impact businesses within the state. It applies by statute only to the processes used by state agencies that are proposing major regulations.
- This regulatory proposal benefits the health and welfare of California residents to the extent that it results result in better, more cost-effective regulations.
- This regulatory proposal does not affect worker safety because it does not impact workers. It applies by statute only to the processes used by state agencies that are proposing major regulations. However, this regulatory proposal benefits the worker safety of California residents to the extent that it results in better, more cost-effective regulations.
- This regulatory proposal does not affect the state's environment because it does not impact the environment. It applies by statute only to the processes used by state agencies that are proposing major regulations. However, this regulatory proposal benefits California's environment to the extent that it results in better, more cost-effective regulations.

### Specific Technologies or Equipment

This regulation does not mandate the use of specific technologies or equipment.

### Consideration of Alternatives

No reasonable alternative to the regulatory proposal would be either more effective in carrying out the purpose for which the action is proposed or would be as effective or less burdensome to affected private persons and equally effective in achieving the purposes of the regulation in a manner that ensures full compliance with the law being implemented or made specific.

Set forth below are the alternatives which were considered and the reasons each alternative was rejected:

(a) (1) Require use of one specific methodology for assessing economic impact. This alternative was rejected because some agencies already have models and expertise that yield valid results. To require them to adopt a new model for this one subset of regulations would not be cost-effective.

(2) Permit use of any methodology for assessing economic impact. This alternative was rejected because it is inconsistent with the legislative intent in enacting SB 617 and because the Department would not be able to compare or verify results of such disparate methodologies.

(b) Not require reporting of what model was used or of any changes made to the model used. This alternative was rejected because the Department would be unable to evaluate the accuracy and validity of the estimates made as part of the assessment.

(c) Not require an agency to explain the equivalency of the assessment methodology it used or to describe the methods and data sources used. This alternative was rejected because the Department would be unable to evaluate the accuracy and validity of the estimates made as part of the assessment.

(d) Allow use of any economic and demographic projections. This alternative was rejected because without a standardized set of projections, agencies could select any projections that support their proposal even if those projections might lack validity. This alternative was also rejected because it would be inconsistent with legislative intent to standardize the assessment process.

(e) Do not require either separation of costs and benefits among the various groups affected by the regulatory proposal or separate identification of disparate impacts on small businesses. This alternative was rejected because it would result in an incomplete

assessment of the true economic impact of the proposed regulation.

(f) Not include a requirement regarding what a baseline for comparison of proposed regulatory alternatives must consider. This alternative was rejected because it would be inconsistent with the requirement in SB 617 that the Department provide guidance in this area to assist agencies in evaluating proposed regulatory alternatives for a major regulation.

(g) Do not require an analysis of changes in behavior in response to a proposed major regulation. This alternative was rejected because it would result in an incomplete assessment of the true economic impact of the proposed regulation.

(h) Do not require information regarding the value of nonmonetary benefits to described and quantified where possible. This alternative was rejected because it is inconsistent with Government Code Section 11346.36(b)(1), which requires an assessment of nonmonetary benefits..

(i) Do not require the standardized regulatory impact analysis to include a report on the discarded options reviewed and the reasons for their rejection. This alternative was rejected because it would be inconsistent with Government Code Section 11346.36(b)(2) and also inconsistent with the intent of SB 617 as evidenced in Government Code Section 11346.2(b)(5).